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Court, in Dispute Over Hill Immunity, Allows Lawsuit by Subjects of Probe

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The Supreme Court put a dent yesterday in the absolute immunity that the Constitution provides to senators, representatives and their staffs "for any speech or debate in either house."

The justices let stand a ruling that the estate of Sen. John L. McClellan (D-Ark.) and three members of the staff of the Permanent Subcommittee on Investigations in the 1960s can be sued for \$50,000 each in damages by Alan and Margaret McSurely.

The court gave no explanation why it had agreed not to rule in the case after hearing oral argument in which the government said that a congressional investigator pursuing a legitimate legislative purpose could break into a home and even kill someone.

Instead, the court simply issued an unsigned, one-sentence statement that it had "improvidently granted" a government petition to review the ruling by the U.S. Court of Appeals for the District of Columbia.

Sources said that the Supreme Court had ducked making a decision on the merits four months after hearing oral argument and after taking tentative votes and circulating draft opinions.

There was no clue as to the reasons, although factors that may have been taken into account included the deaths of three of the four defendants (McClellan and two of the subcommittee aides) and questions raised by recent decisions as to whether the appeals court ruling was truly final and therefore could be appealed.

Yesterday's action sets no controlling precedent. The lawsuit it permits may prove to be unique.

In a statement, the McSurelys said: "We look forward to this trial." They described themselves "as working people who have spent most of our lives in the fight against racism," and who thus came to be "relentlessly persecuted . . . for so long by McClellan and his staff."

The case dates back to 1967, when a Senate resolution authorized McClellan to investigate causes of domestic disorder. At the time, the McSurelys were organizers for the Southern Conference Educational Fund.

Pike County authorities arrested the couple and seized papers in their home, including love letters to Margaret McSurely from her former employer, the late Washington columnist Drew Pearson.

A panel of three federal judges ruled that the state sedition law under which the arrests were made was unconstitutional and ordered impoundment of the seized papers. But the state prosecutor allowed a subcommittee investigator to copy the papers, including the love letters. These, the subcommittee investigator admitted later, weren't needed for legislative purposes.

In the lengthy litigation that followed, the McSurelys retrieved the papers and were convicted of contempt of Congress for disobeying a subpoena to give them up. The appeals court reversed the conviction.

The issue before the Supreme Court was whether to uphold the appellate court ruling that the McSurelys had a right to sue. The government argued that they did not because "speech and debate" had to provide legislative immunity even when a wrong was alleged. The McSurelys agreed that the immunity was absolute—but for normal legislative activity, not lawbreaking.

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